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IN THE

Supreme Court of the United States

October Term 1939.

No. 394.

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,

Appellant,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HONORABLE MICHAEL F. KINKEAD, JUDGE OF SAID COURT OF RAMSEY COUNTY,

Appellee.

APPELLEE'S SUPPLEMENTAL BRIEF.

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APPELLEE'S SUPPLEMENTAL BRIEF.

This supplemental brief is not intended to extend the argument upon matters already covered in the main briefs, but simply to present and comment upon the facts upon some new points raised in appellant's reply brief. In view of references in that brief to certain Minnesota statutes and to the report of the Minnesota committee of psychiatrists and accompanying letters, we have had the same printed in full in the appendix hereto.

AMENDMENTS TO PROCEDURAL STATUTES RELATING TO INSANITY CASES.

Appellant in his reply brief, pages 1 and 2, calls attention to the fact that two sections of the Minnesota statutes relating to insanity cases, referred to in our main brief, Mason's 1938 Supplement, Section 8992-174, relating to institution of proceedings for commitment in insanity cases (appellee's main brief pp. 4 and 54), and Section 8992-143, relating to proceedings for restoration to capacity (Id. pp. 5 and 60), were amended by Laws 1939, Chapter 270, Sections 10 and 8, respectively. Through oversight these amendments were not included in the appendix of our main brief. We have supplied errata sheets for insertion therein, giving the full text of both amended sections and showing the new matter in italics. See also appendix hereto, *post* p. 15. It will be seen that in both sections the former provisions were carried forward intact, the only change being the insertion of some new matter in each section which in no way interfered with the operation of the former and still existing provisions, so far as they may be applicable to proceedings in psychopathic cases. Appellant's statements as to the ending of the life or existence of these sections are therefore misleading, because the former provisions, though under different sections numbers, are still in full force.

THE MINNESOTA STATUTE SYSTEM.

In view of the foregoing and of some further statutory references to be made, an explanation of the present Minnesota statutory system may be helpful. The last complete compilation of the general statutes is Mason's Minnesota Statutes of 1927. Mason's 1938 Supplement is a compilation of the session laws enacted by the legislature since 1927 and before the regular session of 1939, excluding acts of special or local application. Both Mason's 1927 Statutes and the 1938 Supplement have been made official by acts of the legislature (Laws 1929, Chapter 6; Mason's 1938 Supplement, Section 10950-4; Laws 1939, Chapter 4), and the rules of the legislature provided for making reference thereto in amendatory acts (1939 Legislature, Senate Rule No. 34, House Rule No. 4a, Legislative Manual, 1939, pages 116, 121). However, the amendatory act above mentioned, Laws 1939, Chapter 270, did not refer to the 1938 Supplement, but to Laws 1935, Chapter 72, a prior act in which the provisions being amended had been embodied. That act was a complete codification of Minnesota probate law, officially known as the Minnesota Probate Code. It appears in Mason's 1938 Supplement as Sections 8992-1 to 8992-200, inclusive. The digits following the hyphen in each case correspond with the original code section numbers.

We may say in passing that the chaotic condition of the Minnesota statutes, of which this is an example, is in process of being remedied under the permanent statutory revision system adopted by Laws 1939, Chapter 442.

RELEASE OR DISCHARGE OF PSYCHOPATHIC PATIENTS.

Section 2 of the act here in question, Laws 1939, Chapter 369, adopted by reference for the purposes of procedure in psychopathic cases the laws relating to insanity cases. The effect of this has been discussed at length in the main briefs of both parties. Appellant contended in his main brief that the result was to draw in not only the procedural provisions of the laws relating to insanity cases but also all provisions imposing disabilities upon insane persons (appellant's main brief, p. 58). In his reply brief he changes front and insists that the provisions for release or discharge cannot be applied to psychopathic cases, and that therefore one found to have a psychopathic personality must be committed to an asylum for the dangerous insane until released by death (appellant's reply brief, pp. 7-10). It is the view of the attorney general that all the provisions for the release or discharge of persons found dangerously insane, which have frequently been invoked by inmates of hospitals desiring to be released and by the state authorities desiring to release them, would be applicable to a psychopathic case (appellee's brief, p. 27). However, we submit that the question of right to release or discharge is not at issue here, and cannot be made an issue until the Minnesota courts have construed and applied the law in an actual case where a patient committed under the act has sought his release. Appellant cannot raise this issue, since he has not yet been committed.

BAIL.

The considerations discussed under the preceding heading apply with equal force to the question as to the right of a psychopathic patient to bail pending hearing or appeal (appellant's reply brief, p. 2), which was covered in appellee's main brief, pages 26-27.

COMPULSORY PROCESS FOR WITNESSES.

Appellant in his reply brief, pages 14-16, enlarges upon his previous contention that provision for compulsory process for witnesses for a psychopathic patient is inadequate (see appellant's main brief, p. 57). Appellant now says that the weakness of the law in this respect is that it fails to say expressly that the patient may have the sheriff serve his subpoenas free of charge. In addition to what we said on this subject in our main brief, pages 30-31, 38, we submit that there is no authority for the proposition that the Fourteenth Amendment requires the state to pay the cost of serving subpoenas for a person under examination. It is sufficient if the state makes available to him its process, which may be served by any person, with penalties for disobedience attached. However, as we construe the law, it provides for payment of the cost of serving witnesses in behalf of the patient as well as other witnesses, no distinction being made between them. At any rate, this is a matter for determination by the Minnesota courts in the first instance. An individual cannot raise it here unless he comes up with an actual case in which his asserted rights have been denied.

APPELLATE PROCEDURE.

Appellant in his reply brief, page 2, questions the effect in psychopathic cases of certain provisions of the Minnesota probate code relating to appeals in insanity cases. Considering that no issue as to the right of appeal was presented, we did not discuss that matter in our main brief. We merely called attention to the provisions which we deemed applicable (appellee's main brief, pp. 4-6), but did not print them in the appendix to our main brief. However, in view of the statements made by counsel for appellant, we have printed the provisions in question, Mason's 1938 Supplement, Sections 8992-164 (14) to 8992-171, inclusive, in the appendix hereto, *post* pp. 17-20. Appellant thinks that by mentioning certain of these sections, 8992-166, 8992-167, 8992-169, and 8992-170, the psychopathic personality act excludes the others (Act, Section 2; appellant's main brief, p. 4). This is untenable. There is no express limitation or exclusion in the language of the act. It merely says that the patient may appeal to the district court *upon compliance with the provisions* of the specified sections. The four sections mentioned contain not only the requirements with which an appellant must comply upon an appeal, but other provisions governing appellate procedure. Further essential provisions governing appellate procedure are found in the other accompanying sections. Section 8992-164 (14) allows an appeal from an order granting or denying restoration to capacity. Section 8992-165 governs the venue of all appeals. Section 8992-168 provides for suspension of operation of the order appealed from until determination of the appeal. Section 8992-171 provides for entry of judgment for costs, without which

the requirement of a bond under Section 8992-166 would be futile. There is no question but that all of those provisions would be applicable in a psychopathic case, so far as pertinent, under the general reference clause at the beginning of Section 2 of the act, unless excluded by the express mention of the four particular sections. It is evident that the sole purpose of mentioning those four sections was to direct the attention of interested parties to the provisions which must be complied with in order to perfect and prosecute an appeal. No intention to exclude other material provisions is manifest. Under such circumstances the rule that the mention of certain things excludes others has no application.

At any rate, there is no issue here as to the right of appeal. The right of appeal might be pertinent if some other constitutional right essential to due process had been omitted in the provisions for procedure in the probate court but provided for upon appeal. Such is not the case here.

EXAMINING TRIBUNAL.

Appellant in his reply brief, page 5, dwells at length upon the incompetence of the examining tribunal. To what we have said on this subject in our main brief, pages 40-41, we may add that the requisites of due process under the Fourteenth Amendment do not include special qualifications for judges or others who act upon tribunals. All that is required is that there be a regular tribunal in some form established and acting under authority of law. In the absence of constitutional provisions, the composition of a tribunal and the qualifications of its members are for the legislature to prescribe.

Reetz v. Michigan, 188 U. S. 505, 507.

The task of the examining board under the psychopathic personality act, composed of the probate judge or court commissioner and two licensed physicians, is no more difficult than that of the corresponding board in an insanity case, which is composed in exactly the same way.

MINNESOTA COMMITTEE OF PSYCHIATRISTS.

Appellant in his main brief attacked the act in question on the ground that it was passed hastily and without proper consideration. He compared the Minnesota procedure unfavorably with that of Illinois, where, he pointed out, the legislature had the benefit of the advice of a committee of psychiatrists (appellant's main brief, pp. 9, 10, 13, 54-56). Appellant's counsel made no mention in his main brief of the report of the Minnesota committee of psychiatrists, although it had been published in the House legislative journal, to which he had access, and he had a copy of the report (appellant's reply brief, p. 3). We cannot see that the legislative history of the act in question is material here, but in view of the obviously erroneous impressions which appellant's main brief had given concerning the passage of the act, we deemed it proper to state the facts concerning the work and report of the Minnesota committee of experts in our main brief, pages 20-24, and to refer to such portions of the report as seemed pertinent to the issues. Appellant in his reply brief, pages 3-4, now attempts to discredit the report of the committee as having been prepared hurriedly and without proper study. It seems to us that argument along this line is largely irrelevant. The act in

question must stand or fall on its own provisions, regardless of whether it took a day or a year to prepare them. The Minnesota committee report is pertinent here only in so far as it expresses the recommendations of a group of highly qualified scientists as to the definition of psychopathic personality and the manner in which persons having such personality should be treated. However, in view of the reflections made upon the committee report by appellant's counsel, and in order to give the court access to all the available material, for whatever consideration may be deemed proper, we print herewith (appendix, *post* pp. 20-37) the committee report in full, with the appended documents to which it refers, namely, a statement of medical opinion on problems of sexual abnormality or sex perversions by Dr. J. C. McKinley, Professor of Neuropsychiatry and head of the Department of Medicine, University of Minnesota, and a biography of recent technical journal articles on the problem of the insane and sex criminals, together with a letter written to the Governor in connection with the report by Dr. George B. Vold, Professor of Sociology of the University of Minnesota, chairman of the committee.

Appellant's counsel has made some brief detached quotations from the report and from Dr. McKinley's letter in support of his contentions (appellant's reply brief, pp. 3-4). When these quotations are read with the context from which they were taken, it is apparent that, although the scientists who collaborated in the report conceded the desirability of further study of the broad problem of dealing with mental defectives, they were united in the recommendation for immediate legislative action to provide for the confinement and treatment of persons with psychopathic personality. The legislature adopted in substance all of

the recommendations of the committee requiring immediate action, including the creation of interim committees and the enactment of the act here in question (appellee's main brief, pp. 20-24). The act, however, did not go quite so far as the committee recommended, in that it was limited to sexual psychopathics, whereas the committee's recommendation covered all types.

It is true that the changes which the committee recommended in various sections of the probate code, in order to incorporate the term "psychopathic personality" along with insanity and feeblemindedness, were not made in the exact manner suggested in the report, because that would have been cumbersome and would have caused confusion with other measures already pending in the legislature for amendment of some of the same sections in other particulars. The same result was accomplished without confusion by adopting by reference the laws relating to insanity cases. The procedure in such cases is well understood by the probate judges and court commissioners, even though many of them are not lawyers. We apprehend no such difficulties in understanding or applying the law as appellant's counsel imagines.

There is no foundation for appellant's assertion that the committee recognized that the employment of "licensed doctors" (unless they be active and qualified psychiatrists) is a travesty on justice (appellant's reply brief, p. 4). The committee's recommendation for consideration of the whole question of how best to provide adequate psychiatric service to the courts was contained in the second part of the report, in connection with the proposal for appointment of an interim committee to study and report to the next legislature a unified program for the care of defectives of all

kinds (*post* p. 26). This recommendation was in no sense a qualification of the preceding recommendation for the enactment of a psychopathic personality law. The effect of the committee's recommendation was to use the same board of examiners as had been used for many years in insanity cases, the probate judge or court commissioner and two licensed physicians. Evidently the committee considered that such a board would be quite competent for the purposes of the act. The act as adopted incorporated this recommendation.

Few will deny that there is much room for improvement in the methods of providing expert witnesses for the courts. However, insane people were committed and treated for a great many years before modern psychiatrists arrived on the scene. No reason is apparent why the well-marked characteristics of sex perverts cannot be identified and treated just as readily. As time goes on methods will be improved and better service provided, but there is no reason why society should continue to suffer from the outrages committed by sex perverts until mental specialists can be stationed at every remote county seat. As pointed out in our main brief, page 40, expert service is already available if needed in unusual cases.

DEFINITION OF PSYCHOPATHIC PERSONALITY.

On page 11 of his reply brief appellant says that the attorney general, in drafting the bill for the act in question, added the following proviso because he realized that the act was dangerously vague, indefinite, and uncertain:

> "Provided, that political or religious belief or activity, racial origin, or behavior occurring in connection with a labor dispute or a strike, shall not in any case be considered as a basis for a finding of psychopathic personality."

Appellant reads something into the mind of the attorney general which was not there. As stated in our main brief (p. 23) this proviso was included in the report of the committee of experts, with which the attorney general had nothing to do before it was submitted (*post* p. 23). The proviso bears the earmarks of an effort to forestall opposition from certain groups which sometimes entertain fears that new laws affecting personal liberty will be used against them. Similar reassuring provisos appear in the Minnesota laws creating the state bureau of criminal apprehension (Mason's 1938 Supplement, Section 9950-6), and the state highway traffic patrol (Id. Section 2554, sub. 18 (a) as amended by Laws 1939, Chapter 400). The attorney general included the proviso in the bill because the committee recommended it and because it was approved by the legislative sponsors of the bill, and for no other reason. It is the rule of the attorney general's office in drafting bills to express the sponsors' ideas, not his own, so far as matters of substance are concerned. That rule was followed in this case. Somewhere during the course of the bill through the legislature, the proviso in question was cut out, undoubted-

ly because the legislature realized that it was quite superfluous in a measure dealing with sex perverts. In any event, the point seems quite immaterial.

As appellant says (reply brief, p. 11), the definition of psychopathic personality in the original draft of the bill dealt only with sexual psychopathics, just as it now stands in the act. To that extent it was narrower in scope than the committee's recommendation. This was at the instance of the legislative sponsors of the bill. The complete draft, including the definition of psychopathic personality as now found in the act, was submitted by the attorney general to Dr. Vold, chairman of the Governor's committee, and to Dr. McKinley, of the university medical school, a member of the committee, before the bill was introduced. Both of them unqualifiedly approved it. Apparently it did not occur to them, with their knowledge of the subject, that the definition was susceptible of any such fantastic construction as that placed upon it by appellant in his efforts to show that it is vague, indefinite, and uncertain.

CONCLUSION.

The Minnesota psychopathic personality act is as clear and workable as the time-tested procedure in insanity cases which it adopts. It goes beyond the constitutional requirements in safeguarding the rights of persons under examination. It is a conservative effort to deal in an intelligent way with a difficult social problem by preventing chronic sex perverts from committing ravages and by aiding them to overcome their defects. If this form of solution is impossible because of constitutional barriers, it will be difficult to find an adequate remedy.

Respectfully submitted,

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APPENDIX.

MINNESOTA STATUTES RELATING TO INSANITY PROCEEDINGS.

Institution of Proceedings.

The provisions on institution of proceedings included in Mason's 1938 Supplement, Sec. 8992-174, printed in appellee's main brief, pages 54-55, were amended so as to read as follows by Laws 1939, Chapter 270, Sec. 10, wherein all the former provisions were retained, with the insertion of the new matter in italics:

Sec. 10. **Institution of proceedings.**—Laws 1935, Chapter 72, Section 174 is hereby amended to read as follows:

"Unless otherwise indicated by the context, the word 'patient' as used in this article means any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending.

The person, hospital, or institution ordered by the court to make such apprehension, conveyance, or confinement, may execute the order on any day and at any time thereof, by using all necessary means, including the breaking open of any door, window or other part of the building, vehicle, boat or other place in which the patient is located, and the imposition of necessary restraint upon the person of such patient.

Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county

attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto."

Restoration to Capacity.

The provisions on restoration to capacity included in Mason's 1938 Supplement, Sec. 8892-143, printed in appellee's main brief, pages 60-61, were amended so as to read as follows by Laws 1939, Chapter 270, Sec. 8, wherein all the former provisions were retained, with the insertion of the new matter in italics:

Sec. 8. **Restoration to capacity.**—Laws 1935, Chapter 72, Section 143 is hereby amended to read as follows:

"Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

In proceedings for the restoration of an insane or inebriate person, the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each doctor so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred."

APPEALS.

Mason's Minnesota Statutes, 1938 Supplement.

8992-164. **Appealable Orders.**—An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court:

* * *

14. An order granting or denying restoration to capacity.

* * *

8992-165. **Venue.**—Such appeal shall be to the district court of the county of the probate court which made the order, judgment, or decree appealed from, except that an appeal taken from any order, judgment, or decree (other than one determining or refusing to determine venue or transferring or refusing to transfer venue) made before the transfer of venue shall be taken to the district court of the county to which the transfer was made.

8992-166. **Affirmance—Reversal.**—Such appeal may be taken by any person aggrieved within thirty days after service of notice of the filing of the order, judgment, or decree appealed from, or if no such notice be served, within six months after the filing of such order, judgment, or decree. To render the appeal effective (1), the appellant shall serve upon the adverse party or his attorney or upon

the probate judge for the adverse person who did not appear, a written notice of appeal specifying the order, judgment, or decree appealed from, and file in the probate court such notice with proof of service thereof; (2) pay to the probate court an appeal fee of three dollars to apply on the fee for the return; and (3) the appellant, other than the state, the Veterans' Administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, to pay all costs and disbursements, and to abide the order of the court therein.

The notice of the order, judgment, or decree appealed from, the notice of appeal, and the bond if required, shall be served as in civil actions in the district court.

Whenever a party in good faith gives due notice of appeal and omits through mistake to do any other act necessary to perfect the appeal, the district court may permit an amendment on such terms as may be just.

8992-167. **Judgment—Execution.**—When an appeal has been effected, the probate court upon payment of the remainder of its fee, if any, forthwith shall return to the district court a certified transcript of the order, judgment, or decree appealed from, the notice of appeal with proof of service thereof, and the bond if required. If the required fee for the return be not paid within twenty days after the appeal has been effected, the district court may dismiss the appeal. If the appeal be taken under section 164, subsection 10, such transcript shall also contain copies of such other documents, papers, and exhibits as the probate court may consider necessary. The district court may require a further or amended return.

8992-168. **Suspension by Appeal.**—Such appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the district court shall otherwise order. The district court may require the appellant to give additional bond for the payment of

damages which may be awarded against him in consequence of such suspension, in case he fails to obtain a reversal of the order, judgment, or decree so appealed from. Nothing herein contained shall prevent the probate court from appointing special representatives nor prevent special representatives from continuing to act as such.

8992-169. **Trial.**—Within twenty days after perfection of the appeal, the appellant shall file with the clerk of the district court, and serve upon the adverse party or his attorney a clear and concise statement of the propositions, both of law and of fact, upon which he will rely for reversal of the order, judgment, or decree appealed from; within twenty days after such service the adverse party may serve and file his answer thereto and the appellant within twenty days thereafter, may serve and file a reply. If there be no reply, allegations of new matter in the answer shall be deemed denied. Demurrers shall not be permitted. The district court may allow or require any pleading to be amended, grant judgment on the pleadings, or, if the appellant fail to comply with the provisions hereof, dismiss the appeal.

After issues are so formed, the case may be brought on for trial by either party by the filing and service upon the attorney for the adverse party, or if he have none, then upon the clerk for him, of a notice of trial or note of issue, in accordance with the practice in the district court. Thereupon the cause shall be placed upon the calendar, tried, and determined in the same manner as if originally commenced in that court. All appeals other than those from the allowance or disallowance of a claim shall be tried by the court without a jury, unless the court orders the whole issue, or some specific question of fact involved therein, to be tried by a jury or referred.

8992-170. **Affirmance—Reversal.**—Whenever the appellant fails to prosecute his appeal, or the order, judgment, or decree appealed from or reviewed on certiorari is sustained, judgment shall be entered in the district court affirming the decision of the probate court. Upon the filing in the pro-

bate court of a certified transcript of such judgment, the probate court shall proceed as if no appeal had been taken. If the order, judgment, or decree reviewed is reversed or modified, the district court shall remand the case to the probate court with directions to proceed in conformity with its decision. Upon the filing in the probate court of a certified transcript of such judgment, it shall proceed as directed by the district court.

8992-171. **Judgment—Execution.**—The party prevailing on the appeal shall be entitled to costs and disbursements to be taxed as in a civil action. If judgment be rendered against the estate, they shall be an adjudicated claim against it. If judgment be rendered against an appellant other than the State, the Veterans' Administration, or representative appealing on behalf of the estate, judgment shall be entered against the appellant and the sureties on his appeal bond and execution may issue thereon.

GOVERNOR'S LETTER TRANSMITTING COMMITTEE REPORT.

STATE OF MINNESOTA
EXECUTIVE DEPARTMENT
SAINT PAUL

April 4th, 1939

Hon. C. Elmer Anderson
President of the Senate
Hon. Lawrence M. Hall
Speaker of House of Representatives
Gentlemen:

I have the honor to transmit to you herewith the report of the special committee of medical men which I appointed to consider the problem of the insane criminal with special reference to sex criminals.

I know you are all aware of the serious nature and extent of this revolting field of crime, not only in this state, but throughout the nation, and of the unsatisfactory and ineffective manner of handling these cases at the present time.

The committee of ten men of high professional standing were requested to serve on an entirely voluntary basis. They have considered together the problem and in the attached report

make two suggestions that appear to me to be definite and practical and may be a real contribution to the handling of this difficult problem.

The first is an amendment of the laws of the state to make possible the control of the dangerously psychopathic persons without waiting for them to commit a shocking crime, in conjunction with the present methods of controlling the insane, feebleminded and inebriate. And the second suggestion is for the legislature, either through its interim committee or by calling upon interested and qualified groups, such as the State Medical Association and the State Bar Association, to make further interim study of the present handling of these cases and to the codification of the laws on the subject.

The following are the members of the committee who served:

Prof. George B. Vold, Minneapolis, Criminologist at University of Minnesota, Chairman of Special Committee.

Dr. H. B. Hannah, Psychiatrist, 511 Medical Arts Bldg., Minneapolis.

Dr. Fred P. Moersch, Mayo Clinic, Rochester, Minnesota.

Dr. Gordon B. Kamman, Neurologist and Psychiatrist, 1044 Lowry Building, St. Paul.

Dr. George H. Freeman, Superintendent, State Hospital for Insane, St. Peter, Minnesota.

Dr. Alexander G. Dumas, Psychiatrist, Veterans Hospital, Minneapolis, Minnesota.

Dr. L. R. Gowan, Psychiatrist and Neurologist, Duluth, Minn.

Dr. Alex Blumstein, Psychiatrist, General Hospital, Minneapolis, Minnesota.

Dr. M. W. Kemp, Superintendent, State Hospital for Insane, Moose Lake, Minnesota.

Dr. J. Charnley McKinley, University of Minnesota, Minneapolis, Minnesota.

Sincerely yours,

(Signed) HAROLD E. STASSEN,

HES-McN GOVERNOR.

REPORT OF THE GOVERNOR'S COMMITTEE ON THE CARE OF INSANE CRIMINALS AND SEX CRIMINALS.

The problem of the care of insane, defective and psychopathic criminals is an extremely involved one that calls for a careful re-examination of many aspects of our legal and administrative machinery. The care of such criminal offenders is only part of a larger problem of public safety and welfare involved in the care of persons of this type whether criminal or not.

In the case of sex offenses there is the additional complication of a necessarily vague and uncertain difference between criminal acts and behavior that is offensive only in the light of certain standards of morality or propriety. These standards of decency and morality appear to be undergoing considerable change. Thus the bathing suits or sun-suits of today would generally have led to arrests for indecency a few years ago; the display of the more or less undraped human figure so common today in theatrical performances, art exhibits, or even in the dress of the so-called socially elite would not have been permitted a few years ago; while the literature of fiction, drama, and magazine discussion now habitually deals in an open and direct manner with subjects formerly completely tabued. Formal control of behavior in this field becomes, therefore, exceedingly difficult both from the standpoint of legislation and of law enforcement.

This Committee has approached the problem primarily from the standpoint of what action might be desirable on the part of the Legislature. The following two recommendations are submitted for action by the Legislature this session:

FIRST RECOMMENDATION:

A change in the present laws relating to the care of defectives dangerous to the public to make possible the control of dangerously psychopathic persons without having to wait for them to commit a shocking crime.

The principal modification necessary to establish such control would be the following:

(a) Change the general act defining classes of defectives—Session Laws 1917, Chapter 344, Section 1—as follows (new material underlined):[1]

> The word "defective" as used in this act shall include the feeble-minded, the inebriate, *the individual with a psychopathic personality* and the insane. The term "feeble-minded persons" in this act means any person, minor or adult, other than an insane person, who is so mentally defective as to be incapable of managing himself and his affairs, and to require supervision, control and care for his own or the public welfare. The term "inebriate" as used in this act means any person incapable of managing himself or his affairs by reasons of the habitual and excessive use of intoxi-

[1] **Note by Attorney General.** This was Mason's Minnesota Statutes of 1927, Section 8953, in the old probate code, Chapter 74, repealed by the new Minnesota Probate Code, Laws 1935, c. 72. Hence it was impossible to comply literally with this recommendation of the commission. As an alternative the legislature in the psychopathic personality act, Laws 1939, Chapter 369, adopted by reference the laws relating to insanity cases.

cating liquor, drugs, or other narcotics. *The term "psychopathic personality"* as used in this act means *any person who, because of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to evalulate the consequences of his acts, or combinations of these conditions, is socially or morally irresponsible, sexually or otherwise, and who as a result of such conduct becomes a menace to the public good and requires supervision.* The term "insane" as used in this act means any person of unsound mind other than one who may be properly described as only an inebriate, a feeble-minded person or *an individual with a psychopathic personality.*

For the purpose of this act, political or religious belief or activity, or racial origins, or behavior occurring as part of industrial disputes or strikes shall in no case be considered as a basis for a diagnosis of psychopathic personality.

(b) Change the Probate Court Code to incorporate the term "psychopathic personality" in describing conditions and circumstances of procedure. This will involve appropriate change in language in:

Laws of 1935, Chapter 72, Sections 174, 176, 178, 179, and 180.

Laws of 1937, Chapter 435, Section 23.

The Committee has been unable to do the necessary legal research to determine whether other sections need similar change and therefore suggests that the question be referred to the office of the Attorney General.

(c) Change act relating to examination and commitment procedures—Session Laws 1927, Chapter 136, S. F. No. 312—as follows (new material underlined)

An act to amend Sections 8959,[2] General Statutes of Minnesota, 1923 *and 1927* providing for the commitment and release of defectives who shall be found to be dangerous to the public.

Section 1. Examination and report—That Section 8959, General Statutes of Minnesota, 1923 and amendments of 1927, be and the same is hereby amended so as to read as follows:

Section 8959. The board of examiners shall hear all proper testimony offered by any person interested

[2] **Note by Attorney General.** Section 8959 was repealed by the new Probate Code of 1935, and superseded by Section 175 thereof (Mason's 1938 Minnesota Supplement, Section 8992-175). See Note (1), **supra,** and Appellee's Main Brief p. 55.

and the court may cause witnesses to be subpoenaed. When the examination is completed, the board shall determine whether or not the person examined is a feeble-minded person, an inebriate, an insane person, *or an individual who has a psychopathic personality* and shall file in the court a report of their proceedings, including the findings, upon such forms as the state board of control may authorize and adopt. Whenever any defective *who is a feeble-minded person, an inebriate, an insane person, or a person with a psychopathic personality* shall be found to be dangerous to the public by the board of examiners, he shall be committed by the probate court to the asylum for the dangerous insane, *or to the asylum for the dangerous defective,* for safe-keeping and treatment, and no person when so committed, shall be liberated therefrom unless and until a new board of examiners, which shall have been appointed in the same manner and with the same powers, duties, and qualifications, as the board which committed him *or her,* shall after examination and after due notice to the county attorney, find that such person, if at liberty, would no longer be dangerous to the public, *provided also that in the discretion of the court, upon recommendation of the board of examiners such person may be released under supervision.* Such examination shall be held in the county where the original commitment was issued and for the purpose of such hearing, the person to be re-examined shall be brought to said county by order of the probate court directed to the superintendent of the hospital where the person to be re-examined is held.

Section 2. Inconsistent acts repealed—All acts and part of acts inconsistent and in conflict with the provisions of this act, hereby are repealed.

Section 3. This act shall take effect and be enforced from and after its passage.

In attempting to give the exact language of the changes in law thought to be desirable, the Committee has hoped primarily to facilitate legislative procedure. It is suggested that this be carefully checked and analyzed by the legal experts of the Office of the Attorney General.

This recommendation will have the effect of extending the powers of police and prosecuting officials through the probate court to persons known to be dangerously psychopathic or defective without waiting for definite, and sometimes horrible, criminal acts to be committed. A serious limitation in present

procedure is the inability of officials to deal with such persons before they commit criminal acts. The proposed changes will remedy this situation. Though the grant of powers proposed is considerable, the Committee feels that the special conditions of the definition suggested will give adequate protection to the citizen against persecution through arbitrary acts of incompetent or unfriendly officials.

Modification of the law as suggested is highly desirable as a matter of immediate legislative action. No appropriation for additional facilities is suggested at this time. In the development of a long-time program, it is probable that additional facilities and new types of institutional treatment will need to be provided. That, however, is a matter which the Committee does not feel competent to discuss at the present time.

SECOND RECOMMENDATION.

Appointment of an Interim Committee of the Legislature to:

(a) Arrange for, supervise, or direct a more comprehensive study of the legal, medical, and administrative aspects of the whole problem of defective, psychopathic, and insane persons, both criminal and non-criminal. It is suggested that the cooperation of committees of the state and national Bar Associations, the national, state, and county Medical Associations, the National Committee on Mental Hygiene, and other interested groups be utilized in developing special phases of the problem.

(b) Report to the next Legislature the course of action necessary to improve and extend the state's efforts into a general unified program for the care of defectives, psychopathic and insane, both criminal and non-criminal. It is suggested that this will involve:

(1) Separation, classification and codification of laws and amendments now in effect together with suggested changes in law.

(2) Review of existing institutional facilities with attention to the possible needs for more specialized forms of treatment. This may involve the preparation of cost data on a new type of institution for the care of the dangerously defective and psychopathic.

(3) Consideration of the desirability of modification of present laws relating to sterilization to permit greater experimentation with this operation as a form of treatment in the case of certain types of defective, abnormal or psychopathic persons.

(4) Consideration of the whole question of how best to provide adequate psychiatric service to the courts.

These two recommendations are submitted as suggestions for the best procedure to be followed in dealing with the problem of the insane criminal and the sex criminal. The immediate needs of law enforcement officers are cared for in the first recommendation. In view of the many aspects involved in a long-time view of the problem, it is suggested that an interim committee of the Legislature is the best auspices under which to survey the facts and shape up a program for future action.

Attached to this report is a brief summary statement of medical opinion relating to the basic problems of sexual abnormality or sex perversions prepared by Dr. J. C. McKinley. Professor of Neuro-psychiatry and Head of the Department of Medicine, University of Minnesota.

There is also attached a short bibliography of recent technical journal articles bearing on pertinent aspects of the problem of the insane and sex criminals.

LETTER BY DR. J. C. McKINLEY, HEAD OF DEPARTMENT OF MEDICINE AND PROFESSOR OF NEURO-PSYCHIATRY, UNIVERSITY OF MINNESOTA MEDICAL SCHOOL, APPENDED TO COMMITTEE REPORT.

UNIVERSITY OF MINNESOTA
The Medical School
Minneapolis

Department of Medicine, March 20, 1939
Professor George B. Vold, Chairman
The Governor's Committee on Sexual Criminality
Subject: Medical and Psychological Considerations of Sex Perversion

Dear Professor Vold:

In response to your request that I prepare a statement on sex perversion to accompany the Committee's report to the Governor, I am submitting the following comments. The time for preparation has been so short that my words make no pretense of being scholarly or complete, and the Committee has had no opportunity to edit the statement. Hence, aside from a conference with my own staff in the Division of Nervous and Mental Diseases at the University, these are largely my own random thoughts which are necessarily tentative and subject to revision and expansion on more leisurely consideration and more searching study.

A compilation of scientific opinion on this topic would doubtless reveal wide differences of viewpoint as to the underlying factors of causative importance. Such speculations will not be indulged in at this point; the attempt is rather made to indicate some of the major facts that seem fairly well established and acceptable to most of the students whose work has overlapped into this field.

The well-equilibrated, intelligent individual is likely to think of normal sex behavior as the combination of aesthetically acceptable, purposeful attitudes and actions that a man or woman pursues through courtship and into marriage for purposes of procreation; anything not directly concerned with this is likely to be thought of by some people as "perverted." Considerable latitude is allowed, however, so that dancing, a certain amount of physical contact in play, and conversation with sexual reference are all generally permissible. Society frowns upon, but seems rather tolerant of normal but illicit relationships on the part of the young male but holds tenaciously to the standard of celibacy for the young female.

Certainly many and probably the majority of nonmedical persons consider masturbation in the adolescent boy as evidence of degeneracy and apply an even greater measure of discredit towards its practice by the young woman. Yet, numerous surveys have demonstrated that the practice is indulged in by a great majority of young males and very likely by a majority of the young females, so that most students accept such behavior as no more than a normal transitory phase of the development sexually of the individual personality. One can scarcely be dogmatic about the significance of the continuation of active auto-eroticism into later years though it is agreed that onanism becomes a matter of less and less moment among most adults as they become adjusted to a normal heterosexual life. It seems likely that some normal individuals (males especially) who have little or no opportunity for heterosexual relationships deliberately relieve their tensions in this fashion, or if thrown in with others of the same sex, resort as a matter of expediency to homosexual practices. On the other hand, onanism may at times be a part of outspoken perversions such as fetishism, exhibitionism or sadism. For the most part, however, society need have little interest in masturbation in relation to the public welfare but may safely leave the topic to the therapies of the mental hygienist and psychiatrist along with the commonly associated psychasthenic reactions and emotional infantilism of some of these individuals.

Fetishism (the substitution of an inanimate object for the sex partner) may be as harmlessly represented as a lock of hair or a handkerchief; it may be as perverse as to provide a means

of satisfaction through play with urine (urophilia) or feces (coprophilia); or it may be associated with such vicious criminality as removal of parts of the body (often genitalia) from the victim murdered for the purpose. Some psychopaths have been reported with the drive to perform the sexual act on the dead bodies of women (necrophilia); occasional cases are in the literature in which cannibalism (necrophagia) has been subsequently practiced on parts of the victim. These are all doubtless associated with fetishism.

Transvestitism is the drive to wear clothing of the opposite sex. In itself, aside from the social complications that may arise (use of toilet facilities, for example), there would be no great reason for society to interest itself in these cases if it were not for the fact that sexually aggressive individuals might use this method of striking up acquaintances with other people and teaching or misusing them in the direction of major perversion. The psychological explanation of this type of behavior in non-aggressive individuals is not altogether clear but they are probably to be classed usually as definite homosexuals.

Homosexuality refers to the attraction found in a rather small but very appreciable percentage of the population to individuals of the same sex. In the more pronounced cases there is actual aversion to any thoughts of sexual play or satisfaction with members of the opposite sex. In benign form this exists at puberty in the tendency of boys to find their enjoyment with other boys, girls with girls and in a little more outspoken, but still perfectly normal fashion in the "crushes" that some girls have on other girls during this same period. Rather complicated theorizing has been done in psychoanalytical circles regarding this stage of normal, so-called "homosexuality" of adolescence. Since the term carries with it a certain sense of disgust or antipathy in the minds of most people, it is more commonly and probably better referred to as a boy's shyness with girls and vice versa.

Sometimes this tendency to associate with members of the same sex develops into experiments leading to sexual satisfaction through the medium of a partner of the same sex. Development of some of these individuals may then be arrested at this level with persistence and elaboration of the homosexuality and suppression of the growth towards normal heterosexuality. This result should not be thought of as due entirely to the sex experiences at puberty; good evidence shows that many such persons have been endowed at birth with personality characteristics which in large part have determined their fixation at the homosexual level as adults. Large numbers of boys and girls at puberty have opportunities for homosexual experience, yet only a small percentage of them show later

any pronounced tendency in this direction. Of course, repetition of homosexual experiences in predisposed individuals is an aid to the excursion into further homosexuality.

Many homosexuals are otherwise quite acceptable persons. Prominent characters in history who have contributed to art, music, literature and other branches of cultural progress have fallen into this group. Society's interest in these people, however, as a potential menace to social welfare is often correct in that their aggressions against the young of the race with seduction into these practices is an obvious possibility, and an actuality as a study of court records would show. It is to a very considerable degree the group of poorly inhibited homosexuals who are responsible for the continuation in society of undesirable perversions such as fellatio, cunnilingus, and mutual masturbation, to mention a few.

Pedophilia, or the seeking out of pubertal or prepubertal children as the sex partner is most commonly observed in aged men, though younger individuals may at times be apprehended in this practice. Many of these persons are suffering sexual impotence and avoid sexual relations with mature women because of their personal insecurity; their ability to feel superior with children circumvents their sense of insecurity.

Exhibitionism in the narrower sense, which is applicable to the present comment, is the deriving of sexual satisfaction nearly always in the male through the exposure of the erect genitalia to young females. The psychic trauma to the girl may precipitate rather marked psychoneurotic reactions in her. The underlying psychological mechanisms at play in the exhibitionist has been the subject of much speculation by psychologists and psychiatrists and is still a somewhat obscure topic.

Masochism is the tendency to obtain sexual satisfaction through the experiencing of pain. Sadism is the experiencing of sexual satisfaction through the infliction of pain on others. Together, these conditions are sometimes called algolagnia; the former, passive algolagnia and the latter, active algolagnia. Sadism in particular is responsible for many acts of criminal violence, often of the most revolting type. Both masochistic and sadistic trends may be found running through and a part of the various perversions considered in the foregoing. Indeed, mixtures of perverse activities and trends are very likely to occur so that one should not think of the several perversions as necessarily isolated. Even normal heterosexual drive may be associated with perversion; thus rape is probably a combination of normal or at most excessive sexual drive together with sadistic tendencies and lack of proper inhibition.

The constitutional factor was mentioned in connection with homosexuality. Attention is again directed to this point. Most

observers believe that sexually perverted individuals are constitutionally psychopathic. The psychopathic personality traits of these persons are often clearly in evidence through the presence of excessive emotional overreactivity, lack of appreciation or ignoring of the consequences to themselves or to others of their acts, failure to exercise good judgment in other matters. This is not the case with every perverted individual but is sufficiently in evidence in most cases to impress upon the physician, lawyer, legislator or other expert that the problem of sex perversion and sexual criminality is best approached through a consideration of the problem of psychopathic personality in general. That a detailed and extensive codification of this extremely complex subject could be made with sufficient accuracy or inclusiveness to predict all of its ramifications regarding the public safety seems unlikely. Probably the best that can be done at present is to handle the individual case on the advice and cooperation of enlightened experts under the usual safeguards of judicial practice, with provision for prolonged removal of these persons from society when found to be dangerous. Certainly the answer to the problem cannot be found in handling these offenders merely as minor criminals. Short periods of confinement for punishment accomplishes nothing as some of these individuals are convicted over and over again.

Factual data in this field are too fragmentary and subjective. Promising aids to understanding are now developing through such technics as those described by Terman and his collaborators in his book on *Sex and Personality*. Much study is necessary before such approaches can be properly evaluated.

Sincerely yours,

/s/ J. C. McKINLEY, M. D.
Professor of Neuropsychiatry.

JCM-S

LETTER ACCOMPANYING COMMITTEE REPORT BY DR. GEORGE B. VOLD, PROFESSOR OF SOCIOLOGY, UNIVERSITY OF MINNESOTA, CHAIRMAN OF COMMITTEE.

UNIVERSITY OF MINNESOTA
College of Science, Literature, and the Arts
Minneapolis

Department of Sociology
and
Graduate Course in Social Work

March 23, 1939

The Honorable Harold E. Stassen
Governor of the State of Minnesota
State Capitol
Saint Paul, Minnesota

Dear Governor Stassen:

In connection with the attached Committee report, but not as a part of it, I take this opportunity to pass along to you my personal opinion and comment on several phases of the general problem under discussion.

I am sure you will be glad to know that every member of the Committee gave his hearty support and cooperation to the preparation of this report. May I suggest that an appropriate letter from you to the individual members of the Committee would be a gracious courtesy appreciated by them.

With reference to the recommendations of the report itself, it seems to me that they go about as far as is probably desirable at this time. The first recommendation aims to correct a genuine disadvantage in the present machinery for the care of defectives. It will make possible hospital care, either public or private, of some of the known sex perverts who are now a continual menace on the streets, though their specific acts may thus far only be indicative of a generally perverted condition with potentially dangerous further development. The incipient sadist who enjoys cruelty to and the suffering of others, as well as certain types of exhibitionists who get their sex satisfaction from the horror reactions of their victims are especially dangerous from the standpoint of possible further development of their disorders. Later stages in both types of cases are likely to produce violent attacks and serious criminal acts—motivated in either case by the perverse satisfaction in the suffering and horror of the victim.

It seems inevitable that sooner or later the state will have to provide an institution for defective delinquents. From the standpoint of gaining genuine support for such a project, how-

ever, it would seem wise policy to move slowly. If we can gain the legal weapon with which to deal more competently with this class of offenders at this time, the problem of providing increased institutional facilities can well come later. The whole question of administrative reorganization in the control of institutions is involved in the problem of what kind and how extensive new facilities need to be. Definite institutional needs can best be decided after some of the more fundamental problems of reorganization have been settled.

It is with this practical problem in mind that the Committee has asked as its second recommendation that an Interim Committee of the Legislature be appointed to assume responsibility for the preparation of a more specific program of action by the next session of the Legislature. The problems are all practical ones involving the compromise of conflicting interests and views. There will probably be general agreement that ideally we need more institutional facilities and an enlarged and better trained (and better paid) personnel in caring for the insane and other classes of defectives. Yet such need is necessarily relative to other demands on state funds and resources. The problems are not ones of abstract principle or of absolute fact, but of practical compromises—how much can the state afford to pay for such service? And can it afford not to pay? An Interim Committee with fair representation of all pertinent points of view seems the more desirable device through which to approach a program having possibilities of realization.

These compromise aspects are peculiarly evident in questions relating to the care and supervision of the insane. Present arrangements lack unity and centralization of administration. We have in effect as many "systems" for the care of the insane as there are state hospitals, with standards and procedures reflecting to a considerable extent the personal effectiveness of the superintendent in charge. A more unified system with much closer control over the release from such institutions would be possible if a Department of Mental Diseases were created, headed by a well-trained, outstanding person of demonstrated capacity for such a task, with the individual institutions subordinated to the requirements of the system as a whole. But again the principle questions are all relative and dependent upon political expediency and compromise. To create such a unified, coordinated system and then staff it with poorly trained or incompetent personnel, or cut appropriations so that only such types of personnel would be interested, and the end result would be far worse than present arrangements.

It is evident, of course, that were such a unified Department of Mental Diseases set up it could readily be expanded to serve the needs of the courts for psychiatric service in connection

with criminal cases and the insanity defense as now used. Instead of the present system of specialists in private practice acting on a fee basis in special cases only, there would be available, a professional staff of trained persons, expert in the various fields of mental disease, and giving their services to the state on a career basis rather than on the basis of *per diem* fees. These theoretical considerations do not answer, however, the practical question of how far in this direction it is desirable or advisable to go at the present time. That answer in part at least, depends on the general scheme of administrative reorganization that can be worked out.

I have written thus frankly as a matter of personal opinion and not as a member of the committee submitting the report, with the thought that this letter be treated as a private communication not to be released for publication.

With continued best wishes for the success of your program and with kindest personal regards, I am

Sincerely yours,

(sgd.) GEORGE B. VOLD

GEORGE B. VOLD

GBV:er Professor of Sociology.

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SUPREME COURT OF THE UNITED STATES.

No. 394.—October Term, 1939.

State of Minnesota *ex rel.* Charles Edwin Pearson, Appellant,
vs.
Probate Court of Ramsey County, Minnesota, and Hon. Michael F. Kinkead, Judge of said Court of Ramsey County.

Appeal from the Supreme Court of the State of Minnesota.

[February 26, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, Charles Edwin Pearson, petitioned the Supreme Court of Minnesota for a writ of prohibition commanding the Probate Court of Ramsey County, and its Judge, to desist from proceeding against him as a "psychopathic personality" under Chapter 369 of the Laws of Minnesota of 1939. A proceeding under the statute had been brought in the Probate Court for the commitment of appellant and an order for his production and examination had been issued.

Appellant contended that the statute violated the due process and equal protection clauses of the Fourteenth Amendment of the Federal Constitution. After hearing upon an alternative writ, the Supreme Court overruled these contentions and quashed the writ. 205 Minn. 545. The case comes here on appeal. Jud. Code, Sec. 237(a); 28 U. S. C. 344(a).

The statute, in Section 1, defines the term "psychopathic personality" as meaning

"the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons".

Section 2 provides that, except as otherwise therein or thereafter provided, the laws relating to insane persons, or those alleged to be

insane, shall apply with like force to persons having, or alleged to have, a psychopathic personality. There is a proviso that before proceedings are instituted the facts shall first be submitted to the county attorney who if he is satisfied that good cause exists shall prepare a petition to be executed by a person having knowledge of the facts and shall file it with the judge of the probate court of the county in which the "patient" has his "settlement or is present". The probate judge shall set the matter down for hearing and for examination of the "patient". The judge may exclude the general public from attendance. The "patient" may be represented by counsel and the court may appoint counsel for him if he is financially unable to obtain such assistance. The "patient" is entitled to compulsory process for the attendance of witnesses in his behalf. The court must appoint two duly licensed doctors of medicine to assist in the examination. The proceedings are to be reduced to writing and made parts of the court's records. From a finding of the existence of psychopathic personality, the "patient" may appeal to the district court.

After setting forth the general principles which governed its determination, the state court construed the statute in these words:

"Applying these principles to the case before us, it can reasonably be said that the language of Section 1 of the act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be an unwarranted departure from the accepted meaning of the words defined".

This construction is binding upon us. Any contention that the construction is contrary to the terms of the Act is unavailing here. For the purpose of deciding the constitutional questions appellant raises we must take the statute as though it read precisely as the highest court of the State has interpreted it. *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32; *Guaranty Trust Company* v. *Blodgett*, 287 U. S. 509, 513; *Hicklin* v. *Coney*, 290 U. S. 169, 172; *Georgia Railway & Electric Co.* v. *Decatur*, 295 U. S. 165, 170. Moreover, as it

was the manifest purpose of the court to determine definitely the meaning of the Act, we accept the view presented by the Attorney General of the State at this bar, that the court used the word "include" as defining the entire class of persons to whom the statute applies and not as describing merely a portion of a larger class. In advance of a decision by the state court applying the statute to persons outside that definition, we should not adopt a construction of the provision which might render it of doubtful validity. *Stephenson* v. *Binford*, 287 U. S. 251, 277.

This construction of the statute destroys the contention that it is too vague and indefinite to constitute valid legislation. There must be proof of a "habitual course of misconduct in sexual matters" on the part of the persons against whom a proceeding under the statute is directed, which has shown "an utter lack of power to control their sexual impulses", and hence that they "are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire". These underlying conditions, calling for evidence of past conduct pointing to probable consequences, are as susceptible of proof as many of the criteria constantly applied in prosecutions for crime. *Nash* v. *United States*, 229 U. S. 373, 377; *Fox* v. *Washington*, 236 U. S. 273, 277, 278; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348; *Miller* v. *Wurzbach*, 280 U. S. 396, 399. Appellant's criticisms are drawn from his interpretation of the statute and find no warrant in the statute as the state court has construed it.

Equally unavailing is the contention that the statute denies appellant the equal protection of the laws. The argument proceeds on the view that the statute has selected a group which is a part of a larger class. The question, however, is whether the legislature could constitutionally make a class of the group it did select. That is, whether there is any rational basis for such a selection. We see no reason for doubt upon this point. Whether the legislature could have gone farther is not the question. The class it did select is identified by the state court in terms which clearly show that the persons within that class constitute a dangerous element in the community which the legislature in its discretion could put under appropriate control. As we have often said, the legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. If

the law "presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied". *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 69, 78; *Miller* v. *Wilson*, 236 U. S. 373, 384; *Semler* v. *Dental Examiners*, 294 U. S. 608, 610, 611; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400.

There remains the question whether, apart from definition and classification, the procedure authorized by the statute adequately safeguards the fundamental rights embraced in the conception of due process. In this relation it is important to note that appellant has challenged the proceeding *in limine* by seeking to prevent the probate judge from entertaining it. To support such a challenge, the statute in its procedural aspect must be found to be invalid on its face and not by reason of some particular application inconsistent with due process. In that light the argument on this branch of the case also fails.

As we have seen, the facts must first be submitted to the county attorney who must be satisfied that good cause exists. He then draws a petition which must be "executed by a person having knowledge of the facts". The probate judge must set the matter for hearing and for examination of the person proceeded against. Provision is made for his representation by counsel and for compelling the production of witnesses in his behalf. The court must appoint two licensed doctors of medicine to assist in the examination. The argument that these doctors may not be sufficiently expert in this type of cases merely invites conjecture. There is no reason to doubt that qualified medical men are usually available. Laws as to proceedings where persons are alleged to be insane are made applicable. Appellant says that the patient cannot be released on bail. The State contests this, insisting that he may be so released pending hearing or on appeal, pointing to Mason's Minnesota Statutes, 1938 Supplement, Section 8992-178. Appellant contends that if the court finds the patient to be within the statute, he must be committed "for the rest of his life to an asylum for the dangerously insane". Mason's Minn. Stat., 1938 Supp., Sec. 8992-176. The State also contests this conclusion, maintaining that the commitment is without term and subject to the right of the patient, or any one interested in him, to petition the committing court for release at any time. Mason's Minn. Stat., 1938 Supp., Sec. 8992-143; Laws of 1935, Chap. 72, Sec. 143; as amended by Laws of

1939, Chap. 270, Sec. 8. The statute gives a right of appeal from the finding of the probate judge upon compliance with certain specified provisions of the Minnesota laws. Appellant contends that this excludes other provisions of laws relating to appeals in insanity cases. Again, appellant's position is contested by the State upon the ground that there is no express limitation or exclusion in the language of the statute and that other provisions governing appellate procedure apply. These various procedural questions, and others suggested by appellant, do not appear to have been passed upon by the state court.

We fully recognize the danger of a deprivation of due process in proceedings dealing with persons charged with insanity or, as here, with a psychopathic personality as defined in the statute, and the special importance of maintaining the basic interests of liberty in a class of cases where the law though "fair on its face and impartial in appearance" may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings. But we have no occasion to consider such abuses here, for none have occurred. The applicable statutes are not patently defective in any vital respect and we should not assume, in advance of a decision by the state court, that they should be construed so as to deprive appellant of the due process to which he is entitled under the Federal Constitution. *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 546; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 186, 187; *Stephenson* v. *Binford*, *supra*. On the contrary, we must assume that the Minnesota courts will protect appellant in every constitutional right he possesses. His procedural objections are premature.

The judgment is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.